FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 6207/2006

(Santosh S Jaiswal ..vs.. Divisional Commissioner, Nagpur and 6 others)

Office Notes, Office Memoranda of Coram, appearances, Court's Orders or directions and Registrar's orders.	Court's or Judge's Orders

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CORAM:- **R. V. MORE, J.**
DATE:- 13th August, 2007.

1. Heard Mr. Dangre, Advocate for the petitioner, Mr. Adgokar, A.G.P. for respondent Nos. 1 and 2, Mr. Bhoyar, Advocate for respondent Nos. 3 and 6, Mr. Mokadam, Advocate for respondent Nos. 4 and 5.

2. By the present writ petition under Article 226 and 227 of the *Constitution of India*, the petitioner takes exception to the order dated 20.10.2006 passed by respondent No. 1-Divisional Commissioner, Nagpur in an appeal filed by respondent No. 3 whereby the petitioner is held to be disqualified under the provisions of Section 14 (1) (h) of the *Bombay Village Panchayats Act, 1958*.

3. The petitioner is elected as Member of Gram Panchayat, Kawastha, Tq. Deoli, dist, Wardha on 20.06.2005. Respondent Nos. 3

and 6 on 02.07.2005 filed petition under Section 14 and 16 of the *Bombay Village Panchayats Act, 1958* for declaring the petitioner and respondent No. 7 as disqualified from the post of Member, Gram Panchayat Kawastha. By order dated 30.12.2005, respondent No. 2-Additional Collector, Wardha partly allowed the petition filed by respondent Nos. 3 and 6 and held that the petitioner is not liable for action under Section 14 (h) of the *Bombay Village Panchayats Act*. The respondent No. 3, being aggrieved, preferred appeal under Section 16 (2) read with Section 14 (h) of the *Bombay Village Panchayats Act* for declaring the petitioner as disqualified from the post of Member, Gram Panchayat, Kawastha. As stated above, respondent No. 1, by the order impugned in the petition allowed the appeal and the petitioner was held to be disqualified.

4. The petitioner was disqualified as the property bearing No. 251 (it should be 253) is entered in the name of the petitioner in the Assessment List. The demand bill dated 01.07.2004 for house tax of Rs. 3940/- under Section 129 (1) of the *Bombay Village Panchayats Act* was served on the petitioner on 05.07.2004 by Gram Panchayat but the

petitioner refused to accept the same, therefore, the said demand bill was affixed on the front door of the house of petitioner in presence of two witnesses on that day. Even after service of the demand bill, the petitioner failed to pay the Gram Panchayat tax within the stipulated period under Section 14 (h) of the *Bombay Village Panchayats Act* till the last date of filing of the nomination paper and, therefore, it was ruled that he is not entitled to hold the office of the Member of the Gram Panchayat of the said village.

5. Mr. Dangre, the learned counsel for the petitioner submitted that the above said property, admittedly though entered in his name in the Assessment list, the same is situated in the field belonging to his uncle. He further submitted that the property is wrongly recorded in his name though it belongs to his uncle. He also pointed out that the application by his uncle to the Gram Panchayat dated 03.02.2007 claiming that the petitioner's name is wrongly recorded to the aforesaid property and further requesting that his name should be recorded to the said property and he is ready to pay the property tax. In pursuance of this application, entry in the assessment list is corrected and the name

of the petitioner's uncle is shown in the same against the said property and his uncle has cleared the property tax on 20.02.2007. In that view of the matter, the petitioner cannot be made liable for non payment of property tax in respect of the property to which he is not concerned.

6. The learned counsel for the petitioner also made submission that only because of the concession given in the pleadings, the petitioner cannot be stamped out as occupier of the said property. He submitted that the liability to pay property tax is on the owner or occupier and in that event the same being accepted by the owner, the occupier cannot be held liable to pay the property tax. He also relied on **Ram Padarath Mahto ...v/s... Mishri Sinha and another; (1961) 2 SCR 470; Employees; State Insurance corporation ...V/s... S. K. Aggarwal and others; AIR 1998 Supreme Court 2676** and **Shibu Soren ...V/s... Dayanand Sahay; AIR 2001 Supreme Court 2583**, to fortify his pleadings.

7. *Per contra*, Mr. Bhoyar, learned counsel for respondent Nos. 3 and 6 submitted that the petitioner has admitted in the petition that he

is in possession of the said property and using the same for tying the goats with permission of his uncle since last three-four years. The learned counsel further submitted that under Section 124 of the *Bombay Village Panchayats Act*, the liability to pay property tax is on the owner or occupier. He also invited attention to the provisions of Rule 6 of the *Maharashtra Village Panchayats Taxes and Fees Rules, 1960* in which definition of "Occupier" is given. He also invited attention to Rules 11, 12, 13, 14 and 18 of the *Maharashtra Village Panchayats Taxes and Fees Rules.*

8. I have given my anxious thoughts to the vehement submissions made by the learned counsel for the petitioner and the respondents. I have also minutely gone through the relevant provisions of law, playing vital role in the present controversy and also the case laws cited by the learned counsel. I am of the considered opinion that the impugned order does not need any interference in my jurisdiction under Article 227 of the *Constitution of India* for the reasons stated hereinbelow.

9. Section 14 of the *Bombay Village Panchayats Act, 1958* which

has a bearing in the present case, reads as follows:-

*"**14. Disqualification**:-*

[(1) No person shall be a member of a Panchayat or continue as such, who-

(a) .....

(i) .....

(ii) .....

(a-1) .....

(b) .....

(c) .....

[(c-1) .....

(d) .....

(e) .....

(f) .....

(g) .....

(h) fails to pay any tax or fee due to the Panchayat (or the Zilla Parishad within three months from the date on which the amount of such tax or fee is demanded, and a bill for the purpose is duly served on him, or]

Section 124 of the *Bombay Village Panchayats Act, 1958* deals with the levy of taxes and fees by the Panchayats and Sub Section (2) thereof makes provisions that the taxes on the buildings and lands

referred to in Clause (i) of Sub Section (1) shall be leviable from the owners and occupiers thereof.

The definition of "*Occupier*" is given in Rule 6 (b) of the *Maharashtra Village Panchayats Taxes and Fees Rules, 1960* which reads as follows:-

> *"Definitions.- In this Part unless there be anything repugnant in the subject or context,-*
>
> *(a)* .....
>
> *(b)* *"Occupier" includes a person in actual possession of a building or land whether as owner, agent or tenant;*

10. The case of the petitioner is that the said property is situated in the field of his uncle. His name was shown wrongly in the Assessment list. The correction carried out after the date of impugned order does not make any difference. The fact that petitioner is not owner is required to be taken into consideration and, therefore, the impugned order does not consider this aspect, cannot stand to the scrutiny of law. The petitioner, in para No. 3 of the petition, unequivocally admitted that he, with permission of his uncle was using the said property for keeping his

goats there. I am of the considered opinion that the admission of the petitioner to the effect that he is in possession of the said premises if considered along with relevant provisions mentioned *supra* then the petitioner cannot escape his liability to pay the property tax. As stated above, the notice was served upon the petitioner, by fixing copy of the notice on the front door of the house of the petitioner and the same is good service under the provisions of Section 129 (3) (d) of *the Bombay Village Panchayats Act, 1958*.

11. There is no dispute that at relevant time the name of the petitioner is shown in the Assessment list. There is also no dispute that the petitioner is in possession of the said property. The Assessment list is prepared under Rule 9 of the *Maharashtra Village Panchayats Taxes and Fees Rules, 1960*. The provisions of Rule 9 makes it obligatory to show the name of owner and occupier of the property. Under Rule 11, after completion of assessment list, notice is required to be given calling for the objections. Rule 12 speaks about inspection of assessment list and Rule 13 deals with consideration of objection to the Assessment list and authentication of the list.

12. Admittedly, the petitioner's name was registered as the owner of the said property. Till the impugned order was passed, no objections were given. The petitioner never objected entry of name against the said property in the Assessment list and, therefore the Gram Panchayat has rightly issued notice claiming property taxes from the petitioner. There is no dispute that the petitioner failed to pay the amount within the stipulated period under Section 14 (h) of the *Bombay Village Panchayats Act* and in view of this, in my opinion, no fault can be found out in the impugned order.

13. Even if it is assumed that entry of the petitioner's name in the assessment list to the said property is incorrect, in that case also, the petitioner cannot escape his liability to pay property tax, in view of the admitted fact that the petitioner is occupying the said property though he does not claim to be the owner thereof. The liability of the petitioner to pay property tax is spelled out from the provisions of Section 124 of the *Bombay Village Panchayats Act* and Rule 6 of the *Maharashtra Village Panchayats Taxes and Fees Rules*. In my view, therefore, the order passed by the Commissioner is correct and no interference is

called for in the same.

14. Mr. Dangre, the learned counsel for the petitioner submitted that no amount of concession given in the pleading will stamp him as occupier of the said premises. The submission is devoid of merit because of the fact that the petitioner is occupier and is using the said premises which is specifically admitted by the petitioner himself in the petition. It is well settled that the admission binds the author of the maker and hence the petitioner now cannot deviate from his admission. The petitioner also submitted that when the liability is fastened on the occupier and owner, in that case if the liability is accepted by the owner then he cannot be made liable for non payment of the property tax. This submission also, in my view does not hold any water inasmuch as petitioner's uncle, who is alleged to be owner of the said premises, has accepted liability only after the impugned order was passed. In my opinion, action on the part of the petitioner's uncle in giving application to record his name and subsequent payment of the property tax, after the order is passed, is clearly an after thought and plotted to save the petitioner from incurring disqualification.

15 The learned counsel for the petitioner relied upon **Ram Padarath Mahto ...v/s... Mishri Sinha and another** (*supra*). The Hon'ble Supreme Court has observed in para 8 of the judgment as follows:-

> "It appears that before the High Court it was not disputed by the appellant that the service whose performance had been undertaken by the State Government consisted in the supply of grain to the people of the State of Bihar; and the High Court thought that from this concession it inevitably followed that the firm had a share and was interested in the contract for the performance of the service undertaken by the Government of Bihar. It seems to us that the concession made by the appellant does not inevitably or necessarily lead to the inference drawn by the High Court. If the service undertaken by the State Government is one of supplying grain how does it necessarily follow that a contract by which the bailee undertook to store the grain was a contract for the supply of grain? It may sound technical, but in dealing with the statutory provision which imposes a disqualification on a citizen it would be unreasonable to take merely a broad and general view and ignore the essential points to distinction on the ground that

> they are technical. The narrow question is; if the State Government undertook the work of supplying the grain, is the contract one for the supply of grain?; in our opinion, the answer to this question must be in the negative; that is why we think the High Court did not correctly appreciate the effect of the contract when it held that the said contract brought the appellants case within the mischief of Section 7 (d).”

In the aforesaid case the Hon'ble Supreme Court, after appreciation of the facts of the case, held that the concession made by the appellant is not inevitable or necessary for the inference drawn by the High Court. It was further held that in dealing with the statutory provision which imposes disqualification, it would be unreasonable to take broad and general view and ignore the essential points of distinction on the ground that they are technical.

In the present case, the petitioner's admission coupled with the statutory provision unmistakenly points out that the petitioner has incurred disqualification. Hence, the case law cited by the learned counsel for the petitioner cannot come to the rescue of the petitioner.

16. The other Authority on which the learned counsel for the

petitioner has placed reliance is **Employees; State Insurance corporation ...V/s... S. K. Aggarwal and others** (*supra*) in which, it is held by the Hon'ble Supreme Court that in a proceeding for criminal breach of trust against the employer for default in payment of contribution to Employees State Insurance, the expression “employer” does not include Director.

The ratio laid down in the aforesaid case, in my view, also cannot be made applicable to the facts of present case.

17. The learned counsel for the petitioner also relied upon **Shibu Soren ...V/s... Dayanand Sahay** (*supra*). In his case in paragraph 27, the Hon'ble Supreme Court has held as under:-

> “While interpreting statutory provisions, Courts have to be mindful of the consequences of disqualifying a candidate for being chosen as, and for being, a member of the legislature on the ground of his holding an office of profit under the State or the Central Government, at the relevant time. The Court has to bear in mind that what is at stake is the right to contest an election and to be a member of the legislature, indeed a very important right in any democratic set up. “A practical view not pedantic basket of tests” must, therefore, guide the Courts to

> arrive at an appropriate conclusion. A ban on candidature must have a substantial and reasonable nexus to the object sought to be achieved namely, elimination of or in any event reduction of possibility of misuse of the position which the concerned legislator holds or had held at the relevant time. The principle for debarring holders of office of profit under the Government from being a Member of Parliament is that such person cannot exercise his functions independently of the executive of which he becomes a part by receiving “pecuniary gain”. Under Article 102 (1) (a), of course, the Parliament has the jurisdiction to declare an 'office' as not to disqualify its holder to be a Member of Parliament and likewise under Article 191 (1)(a) the State Legislature has the jurisdiction to declare an 'office' as not to disqualify its holder to be a member of the State Legislatures. Moreover, apart from the office being an “office of profit”, it must also be an office under the State or Central Government.”

A plain reading of the above observations shows that ban on candidature must have substantial and reasonable nexus to the object sought to be achieved.

In the present case, in my opinion, the object sought to be achieved by provisions under Section 14 (h) of the Bombay Village Panchayats Act, has reasonable nexus with the alleged default on the part of the petitioner. In view of this the present Authority is of no use

for the petitioner.

18. In the circumstances mentioned above, no fault can be found with the order impugned in the present writ petition. The writ petition doesn't warrant interference in my jurisdiction under Article 227 of the *Constitution of India*. The writ petition is, therefore, dismissed with no order as to the costs.

JUDGE

kahale